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STATEMENT OF FACTS

This proceeding in prohibition is brought by the Relator to determine whether Respondent has acted within his jurisdiction and whether the Circuit Court of Clay County, Missouri, has jurisdiction and authority, under law, to continue to maintain Case No. CR199-5085F [hereinafter 5085]. Case No. 5085 consists of five felony counts, to wit: two counts of Robbery in the Second Degree, one count of Robbery in the First Degree, and two counts of Attempted Robbery in the First Degree.

Although the Respondent does not dispute any dates presented forth by Relator, one key date was omitted from Relator's Statement of Facts. Therefore, Respondent sets forth the following pertinent dates in chronological order to aid the Court.

Respondent incorporates by reference all transcripts submitted to this Court of the relevant proceedings. Respondent also incorporates by reference and attaches hereto: Defendant's Exhibit #1, Detainer Record – CM080, Copy of p. 67 Transcript of James Earl Lybarger's Testimony on February 22, 2002, Copy of Transcript of Alice Ruth Doman's Testimony dated April 2, 2002, and Chronological File, Exhibit 21.

On **10-15-99**, Clay County Prosecuting Attorney filed by Information Case No. CR199-4474F [hereinafter 4474] alleging one count of Robbery in the Second Degree. On this same date, Clay County sends notice of detainer on this charge.

On **10-21-99**, Relator receives notice of detainer on 4474 via a computer printout "Detainer Record-CM080." See Defendant's Exhibit 1, attached hereto, p. A-1. Relator testified on February 22, 2002 that he received Defendant's Exhibit 1 on 10-21-99. See Copy of p. 67 Transcript of James Earl Lybarger's Testimony on February 22, 2002, attached hereto, p. A-2. This date is omitted from Relator's Statement of Facts.

On **12-01-99**, an Indictment was filed in Clay County in 5085 charging Relator with five felony counts, to wit: two counts of Robbery in the Second Degree, one count of Robbery in the First Degree, and two counts of Attempted Robbery in the First Degree.

On **2-3-00**, Relator is delivered to the custody of the Kansas Department of Corrections [hereinafter KDOC].

On **2-18-00**, Relator received notice of the Indictment 5085 via a Detainer Notice.

On **2-18-00**, Relator is transferred the KDOC Ellsworth Correctional Center.

On **12-18-00**, the Clay County Sheriff's Office request to lodge 4474 detainer to KDOC at Ellsworth.

On **12-19-00**, Relator is shown a form labeled "Detainer," relating to 4474. Relator is verbally informed of his right to request final disposition of detainer. See Copy of Transcript of Alice Ruth Doman's Testimony dated April 2, 2002,

attached hereto, p. A-4 to A-7. Relator proceeds to sign the "Detainer." See Chronological File, Exhibit 21, attached hereto, p. A-8.

On **12-27-00**, Relator is informed of a detainer requested by Jackson County in CR1999-6592.

On **2-21-01**, Relator request to file 180-day Disposition of Detainer writ in Clay and Jackson Counties.

On **2-23-01**, Relator received Kansas Form I "NOTICE OF UNTRIED INDICTMENT, INFORMATION, OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION," on 4474. Relator signs "INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR DISPOSITION OF INDICTMENTS, INFORMATION OF COMPLAINTS" for 4474 detainer.

On **2-26-01**, Relator informs KDOC via INMATE REQUEST TO STAFF MEMBER that Request for Disposition had been sent to the wrong county.

On **2-28-01**, Relator informed that corrected Form IV had been sent to Clay County. Clay County Prosecuting Attorney filed Nolle Prosequi dismissing 4474.

On **3-1-01**, Relator informed that 4474 detainer has been cancelled.

On **3-2-01**, Clay County accepts temporary custody by Agreement Detainers Form VII.

On **3-05-01**, Relator receives Kansas Form I, "NOTICE OF UNTRIED INDICTMENT, INFORMATION, OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION," on 5085. Relator refuses to sign, stating that he thought his previous request for disposition covered these charges also. Relator

makes reference to Paragraph 3 of the Interstate Agreement of Detainer. See RSMo 217.490, Article III, Paragraph 3 and Chronological File, Exhibit #21, p. A-8.

On **4-04-01**, Relator transported to Clay County.

On **4-05-01**, Relator arraigned on 5085.

On **10-22-01**, Relator files "Amended Motion to Dismiss indictment for Violations of Interstate Agreement on Detainers."

On **5-17-02**, Relator's Motion is denied.

On **6-04-02**, Relator Petition for Writ of Prohibition in Missouri Western District Court of Appeals.

On **6-24-02**, Missouri Western District Court of Appeals denied the petition for Writ of Prohibition.

TABLE OF CASES, STATUTES, AND OTHER AUTHORITY

Cases

Statutes

1. Sections 217.450-485, RSMo (2002) at: pp. 8, 13, 16, 18.
2. Sections 217.490, RSMo (2002) at: pp. 8, 9, 10, 12, 13, 16, 17, 18, 19, 22.
    a. Article III, paragraph 3 at: pp. 5, 10, 12, 18.
    b. Article III, paragraph 4 at: pp. 19, 21.
    c. Article III, paragraph 5 at: p. 20.
    d. Article V, Paragraph 4 at: p. 20.

Missouri Supreme Court Rules

1. Missouri Supreme Court Rule 23.10 at: pp. 9, 20, 21.
2. Missouri Supreme Court Rule 23.11 at pp. 9, 21.

POINTS RELIED ON

1. Relator is not entitled to an order prohibiting Respondent from taking any further action in *State of Missouri vs. James L. Lybarger*, Case No. CR199-5085F now pending in the Circuit Court of Clay County, Missouri because Relator was "promptly informed" of pending detainers as required by the Interstate Agreement on Detainers (Section 217.490, RSMo), in that the Relator received actual notice of the detainers and his related rights within ten months of incarceration which constitutes prompt notice as required by the Interstate Agreement on Detainers; or in the alternative, if this court finds that the notice was not prompt, dismissal of the charges is not the appropriate remedy for a custodian state's failure to promptly inform Relator of pending detainers, where Relator has shown no prejudice.

a. State v. Reynolds, 813 S.W.2d 324 (Mo. App. E.D. 1991).

b. People v. Higinbotham, 712 P.2d 993 (Colo. en banc 1986).

c. State v. Clark, 222 Kan. 65, 563 P.2d 1028 (Kan. 1977).

d. Commonwealth v. Gonce, 466 A.2d 1039 (Pa. Super. Ct. 1983).

e. Section 217.490, RSMo (2002)

f. Sections 217.450 to 217.485, RSMo (2002) inclusive

2. Relator is not entitled to an order prohibiting Respondent from taking further action as to Count I in the case of *State vs. Lybarger*, Case No. CR199-5085F in the Circuit Court of Clay County, Missouri because the filing of said Count I in Division One of the Circuit Court of Clay County, Missouri, is an indictment stemming from the same transaction in CR199-4474F, in that a request for disposition under the Interstate Agreement on Detainer, RSMo 217.490, shall be a request for disposition on all untried informations and indictments and Section 217.490 allows prosecution on any other charge or charges arising out of the same transaction; furthermore, the Prosecution is permitted to indict a crime previously charged via information and continue prosecution on the indictment.

a. Section 217.490, RSMo (2002).

b. Supreme Court Rule 23.10 (2002).

c. Supreme Court Rule 23.11 (2002).

ARGUMENT

1. **Relator is not entitled to an order prohibiting Respondent from taking any further action in *State of Missouri vs. James L. Lybarger*, Case No. CR199-5085F now pending in the Circuit Court of Clay County, Missouri because Relator was "promptly informed" of pending detainers as required by the Interstate Agreement on Detainers (Section 217.490, RSMo), in that the Relator received actual notice of the detainers and his related rights within ten months of incarceration which constitutes prompt notice as required by the Interstate Agreement on Detainers; or in the alternative, if this court finds that the notice was not prompt, dismissal of the charges is not the appropriate remedy for a custodian state's failure to promptly inform Relator of pending detainers, where Relator has shown no prejudice.**

Relator received actual notice of the detainers filed against him as well as his rights under the Interstate Agreement on Detainer [hereinafter AOD], specifically his right to request final disposition, thereby satisfying the requirements of RSMo § 217.490. Section 217.490, RSMo, Article III, paragraph 3 states, the custodian state "shall *promptly inform* him of the source and contents of any detainer lodged against him and shall inform him of his rights to make a request for final disposition of the indictment, information or complaint on which the detainer is based." (Emphasis added).

Relator asserts that only the written notice of the 5085 indictment, received on March 5, 2001 satisfies the above requirement that he be informed of both the

existence of the detainer AND the right to request final disposition. Relator avers that all previous, non-written notice is insufficient. However, nothing in the AOD requires written notice.

Relator became aware of the existence of the 5085 detainer on February 18, 2000 via a "Detainer Notice." He had been aware of the 4474 detainer since October 21, 1999 by way of a computer "Detainer Record." The written form labeled "Detainer" was delivered to and signed by him on December 19, 2000, notifying Relator a second time as to the 4474 detainer.

According to Alice Doman's testimony, the Corrections Counselor in Ellsworth, Kansas assigned to Relator, she gave verbal notice to Relator of his rights to make a request for final disposition on December 19, 2000. Relator told Doman that he would file the writ after Christmas. Eight days later, on December 27, 2000, Doman again saw Relator in order to inform him of the existence of another detainer, this in relation to CR1999-06592, which is a Jackson County charge. Again, Relator stated that he would file his writ in January. See Copy of Transcript of Alice Ruth Doman's Testimony dated April 2, 2002, attached hereto p. A-3 to A-7. On February 21, 2001, Relator made a request stating that he wished to file the 180-day disposition of detainer. On February 23, 2001, the appropriate form was presented to him and he signed it. On March 6, 2001, he advised Doman that he did not wish to sign a "NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION," which dealt with the 5085 detainer. In her

Chronological File, Doman noted that Lybarger expressed to her the belief that his prior request for final disposition, made on February 21, 2001, covered this detainer also. He referred to the third paragraph of the AOD, which states, in pertinent part, "Your request for final disposition will operate as a request for final disposition of all untried indictments, information or complaints on which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed." RSMo § 217.490 Art. III, Paragraph 3.

Section 217.490, RSMo, Article III, Paragraph 3 requires only that Relator be promptly informed of the existence of the detainer and his right to request final disposition. There is no requirement that the notice be in writing. In her conversations with Relator, Doman informed him of his right to request final disposition of the underlying charges. Relator signed a request for 180-day disposition on the 4474 detainer and later expressed his understanding that this request would also cover the 5085 detainer. This demonstrates that Relator had been informed of his rights under Section 217.490 in relation to the 5085 detainer.

Not only did Relator receive actual notice of the detainers and his rights such as to satisfy the notice requirement in Section 217.490, but the notice was also prompt. Relator argues that if Relator did not receive appropriate notice within one year, he would be entitled to a final dismissal of the information with prejudice. Relator cites State v. Thomas, 972 S.W.2d 309 (Mo. App. W.D. 1998), *cert. denied* 525 U.S. 1122, 119 S.Ct. 903, 142 L.Ed.2d 902 (U.S.Mo. 1999), in

support of this proposition. The testimony of Doman, the Chronological File, and Relator's own testimony all demonstrate that by December 19, 2000, Relator was informed of the existence of the detainers in writing and his rights under the AOD. This is approximately ten months after the 5085 detainer had been logged with the KDOC on February 18, 2000. Relator understood his rights well enough to tell Doman that he would file the writ requesting disposition after the Christmas holiday. This is prompt notice when considered in light of both RSMo § 217.490 and the applicable case law.

Even should this Court accept Relator's argument that only on March 5, 2001 did Relator receive adequate notice, State v. Reynolds, 813 S.W.2d 324 (Mo. App. E.D. 1991) stands for the proposition that prisoners held in out-of-state or federal facilities receive prompt notice of a detainer if the notice comes within fifteen months of the prisoner's arrival at the facility. Following the ruling in State ex rel. Kemp. v. Hodge, 629 S.W.2d 353 (Mo. en banc 1982), that the AOD must be considered together with RSMo §§ 217.450-485, the Uniform Mandatory Disposition of Detainers Law [hereinafter UMDDL], the Court ruled that, in order that the two laws "be considered in harmony," the warden or other official will have, at minimum, one year to notify the prisoner in an out-of-state or federal facility. Reynolds, 813 S.W.2d at 325. Relator was transferred to the custody of the KDOC on February 3, 2000 and received what Relator characterized as notice "satisfying" Article III, Paragraph 3 of the AOD on February 23, 2001. Thus, a period of one year and twenty days had elapsed between the time of Relator's

delivery to the KDOC and proper notice under even Relator's unduly meticulous standard. This period of time falls well within the limits set by the Reynolds Court. Once again, the conclusion is that what Relator received satisfies the requirements set forth in the AOD.

If this Court should find that Relator did not receive proper prompt notification of existing detainers and his rights under the AOD, a custodial state's failure to inform an inmate does not require dismissal where other jurisdictions do not require dismissal under these circumstances.

There is no direct Missouri case on this point. "The terms of the agreement (AOD) cause decisions of other states which are a part to the agreement to be particularly valuable in its construction." State v. Smith, 686 S.W.2d 543, 547 (Mo. App. S.D. 1985), *citing* State ex rel. Kemp v.Hodge, 629 S.W.2d 353 (Mo. en banc 1982).

In support of Relator's argument, he heavily relies on Romans v. Dist. Ct. In & for Eighth Jud. Dist., 633 P.2d 477 (Colo. en banc 1981), but this case has been receded from by People v. Higinbotham. 712 P.2d 993 (Colo. en banc 1986). In Higinbotham, the Court held that a violation of the express language of the UMDDL's one year requirement of notification "does not mandate an automatic dismissal of the charges against the defendant" where the state can show that there was no prejudice to the Defendant. Higinbotham, 712 P.2d at 996, 1001. The Court recognized the inconsistency between its current decision and Romans. Higinbotham, 712 P.2d at 999. The Court recognized that this decision eroded the

foundation of the reasoning in Romans. Higinbotham, 712 P.2d at 999. In addition, the Court further stated "*neither the United Supreme Court nor any of the other federal courts has ever held*, as this court did in Romans and Hughes, *that each violation of a provision of the IAD [AOD]*—even those for which the act specifies no sanction—*requires dismissal of the charges* against the defendant without regard to prejudice." Id., at 1000 (emphasis added).

Although there is no Missouri case on point, State v. Smith stated the principle set forth in Romans. 686 S.W.2d 543, 546 (Mo. App. S.D. 1985). This case was published in the brief five-year span that Romans was followed by Colorado. Nevertheless, the Court continued to cite four cases with contradictory results. Smith, 686 S.W.2d at 546, *citing* Coit v. State, 440 So.2d 409 (Fla. Dist. Ct. App. 1983); People v. Howell, 119 Ill. App.3d. 1, 74 Ill.Dec. 734, 456 N.E.2d 236 (Ill. App.4 Dist. 1983); State v. Clark, 222 Kan. 65, 563 P.2d 1028 (Kan. 1977); Commonwealth v. Gonce, 320 Pa.Super. 19, 466 A.2d 1039 (Pa. Super. Ct. 1983). Since this time, several states have refused to extend UMDDL's harsh remedy of dismissal to the AOD's requirement of prompt notification of the custodial state of any detainers and rights under the AOD.

The Supreme Court of Kansas addressed this issue where prison officials failed to notify defendant of detainers and his right to speedy disposition of the charges. State v. Clark, 222 Kan. 65, 563 P.2d 1028 (1977). The Court recognized that the UMDDL requires that prison officials inform a prisoner of any detainers lodged against him and right to request a speedy disposition of the

charges within one year of incarceration. The failure to notify a prisoner results in a final dismissal of the charges with prejudice. The Court stated that the purposes of the AOD and UMDDL are parallel, but that they are not alike or identical in all respects. Id., at 68, *citing* Ekis v. Darr, 217 Kan. 817, 539 P.2d 16 (Kan. 1975); State v. Dolack, 216 Kan. 622, 533 P.2d 1282 (Kan. 1975). The AOD "is distinguishable from the Act (UMDDL) in cases where prison officials fail to notify a prisoner of an outstanding detainer." Id. The UMDDL provides a sanction, which compels a court to dismiss charges for failure to notify; the AOD provides no such provision. Id. The Court concluded "a legislative enactment providing for a speedy trial, with no sanction for failure to comply with the mandate, is generally construed as *directory*." Id., 68-69, *citing* State v. Fink, 217 Kan. 671, 676, 538 P.2d 1390 (Kan. 1975) (emphasis added).

The Florida Court of Appeals declined "to adopt a hard and fast rule that Florida must always bear the burden of the derelictions of the officials in a sister state." Coit v. State, 440 So.2d 409, 412 (Fla. Dist. Ct. App. 1983). The Court rejected the reasoning in Romans and instead followed the Kansas reasoning in State v. Clark. Coit, 440 So.2d at 412. The Court held that the notification requirement in the AOD was *directory* and "does not automatically require dismissal of the charges." Id. The Court agreed that "such a violation of a defendant's right to speedy trial must be gauged from a constitutional viewpoint, taking into consideration such factors as the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Id.

The Superior Court of Pennsylvania held that the dismissal is not the proper remedy when officials have failed to promptly inform an inmate of detainers and AOD rights. Commonwealth v. Gonce, 466 A.2d 1039, 320 Pa. Super 19 (Pa. Super. Ct. 1983). The AOD "specifically provides for a remedy of dismissal of charges in three situations: (1) if trial is not commenced within the period prescribed in Art. III(a) and Art. IV(c) as specified by Art. V(c); (2) under Art. IV(e) where trial does not commence before the prisoner is returned to the sending state; and (3) when the receiving state fails or refuses to accept temporary custody under Art. V(c)." Id., at 1044. Since the legislature had chosen to mention specific situations when dismissal of the charges would be the appropriate relief, the Court would not extend the relief to cover "possible procedural errors made by another state's prison officials." Id. The Court concluded that the appropriate remedy would be civil suit against the prison officials.

The Oregon Court of Appeals declined to interpret the AOD to require dismissal of the charges where the prison officials failed to inform a prisoner of the detainers and his rights under the AOD. State v. Estes, 131 Or. App. 188 (Or. Ct. App. 1994). The Court first noted that the AOD requires dismissal in specific circumstances, but not this situation. "Given that statutory silence, we decline to insert a remedy of dismissal where none is provided." Id., at 191. The Court looked to Fex v. Michigan, 507 U.S. 43, 113 S.Ct. 1085, 122 L.Ed.2d 406 (1993), for further guidance. The Supreme Court has concluded that the 180-day limitation was triggered when the prosecutor received the prisoner's request and

not when the prisoner submitted his request for final disposition. "It is more reasonable to think that the receiving State's prosecutors are in no risk of losing their case until they have been informed of the request for trial." Fex, 507 U.S. at 51. The Oregon Appellate Court concluded that prison officials in the custodian state should not be able to preclude prosecution in another state by failing to inform a prisoner that a detainer had been lodged. Estes, 131 Or. App. at 192.

If this court interprets Relator's notification as delayed, the delay was slight. No deterrent effect will be achieved by importing the UMDDL's sanction for failure to notify. Missouri is powerless to force a warden in a sister state to notify prisoners of Missouri detainers. Relator alleges violation by the KDOC and requests punishment on the State of Missouri, who had no control over the notification of Relator. This principle has led other states to reject the sanction against the powerless state. Only one state, Colorado, has followed Relator's principle and did so for a mere five years. Sister states have relied on the statutory silence in the AOD as compared to the UMDDL. This statutory silence infers intent by the Missouri Legislature to render this remedy unavailable for delayed notification under RSMo § 217.490, Art. III, Paragraph 3.

Relator was promptly notified of the pending detainers. He was notified within ten months of incarceration. Even by Relator's standards, Relator was notified within one year and twenty days. If the Court finds delay in informing Relator of his detainer and his rights associated with it, Missouri should not be punished for the mistakes of sister states. Relator has shown no prejudice in any

possible delay in notification. For these reasons, Respondent has acted within his proper jurisdiction and Clay County has proper jurisdiction and authority to proceed in this matter. Therefore, Relator's writ of Prohibition should be denied.

2. **Relator is not entitled to an order prohibiting Respondent from taking further action as to Count I in the case of *State vs. Lybarger*, Case No. CR199-5085F in the Circuit Court of Clay County, Missouri because the filing of said Count I in Division One of the Circuit Court of Clay County, Missouri, is an indictment stemming from the same transaction in CR199-4474F, in that a request for disposition under the Interstate Agreement on Detainer, RSMo 217.490, shall be a request for disposition on all untried informations and indictments and Section 217.490 allows prosecution on any other charge or charges arising out of the same transaction; furthermore, the Prosecution is permitted to indict a crime previously charged via information and continue prosecution on the indictment.**

Relator argues that Relator requested final disposition only on 4474, which was subsequently dismissed, and the effect of the dismissal was forfeiture of prosecution on Count I of the Indictment 5085.

RSMo 217.490, Art. III, Paragraph 4 states "*Any request* for final disposition made by a prisoner …*shall operate as a request for final disposition of all untried indictments, informations or complaints.*" (emphasis added). This paragraph sets forth the principle that a request for disposition on one detainer is a

request for disposition of all detainers. Furthermore, RSMo 217.490, Art. III, Paragraph 5 states, "*Any request for final disposition …* shall also be *deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby.*" "*The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required* in order to effectuate the purposes of this agreement." Id. (Emphasis added). Art. III, Paragraphs 4 and 5 set forth the proposition that a request for final disposition in a state is the request for disposition *in all untried cases* in that state. This would include the Indictment in 5085. RSMo 217.490, Art. V, Paragraph 4, permits prosecution on the charge or charges contained in one or more untried informations or for *prosecution on any other charge or charges arising out of the same transaction.* (emphasis added). Case 4474 and Count I of 5085 are the same crime, which was subsequently indicted after the information was filed.

In addition, Supreme Court Rule 23.10 contemplates an information and indictment pending in the same court both charging the same crime. "The indictment last found, or the information last filed shall suspend proceedings upon those previously found or filed." In this case, no action was taken except a detainer lodged against Relator in 5085 while 4474 was pending. Once 4474 was dismissed, 5085 no longer had to be suspended and the State was proper in proceeding on this indictment. Furthermore, Supreme Court Rule 23.11 states that "No indictment or information shall be invalid, nor shall the trial, judgment,

or other proceedings thereon be stayed, because of any defect therein which does not prejudice the substantial rights of the defendant." The short period of time in which Court I of 5085 and 4474 were alleging the same crime caused no prejudice to the substantial rights of Relator.

The State had two detainers lodged against Relator. One detainer, 4474, was subsequently dismissed because the charge was indicted by the Clay County Grand Jury. Count I of 5085 is the same offense or crime from the dismissed case, 4474. RSMo 217.490, Art. V, Paragraph 4 allows prosecution on any other charge that arises out of the same transaction. This is the exact same charge, but instead of an information-charging instrument, it is in indictment form. In fact, Relator made a clear request for disposition of all detainers including 5085. See Chronological file, Exhibit 21, attached hereto, p. A-8. In conclusion, the AOD and Missouri Supreme Court Rules allow the continued prosecution on Count I of 5085, because it arises out of the same transaction.

Where prosecution is just in continuing pursuit of 5085, Respondent has proper jurisdiction and authority to continue with Count I in 5085. For these reasons, Relator's Writ of Prohibition should be denied.

SUMMARY

Relator was notified in writing of the existence of the detainers and verbally of his rights within 10 months of incarceration. On its face, there is no requirement in the AOD that the prisoner be informed in writing. If a requirement of written notice is found, the Relator received this notice promptly. The language of the AOD requires the notice be prompt. Prompt is nowhere defined in the text of the AOD. There is no mention of a one-year time limit in the AOD itself. Even by Relator's rigid standard's, notification was given within one year and twenty days. This is within the 15-month requirement of the Reynolds Court. If this Court finds a one-year maximum, delayed notice should not lead to dismissal of the charges with prejudice. Relator has not shown how he was prejudiced by any possible delayed notification of detainers and his associated rights.

Case 5085 is simply the indictment of 4474, which constitutes a charge that arises out of the same transaction in 4474. Supreme Court Rules and the AOD allow the further prosecution on the indictment after the dismissal of 4474. Since the case has been dismissed, prosecution of 5085 is proper.

Wherefore as, Relator received prompt notification as required in Missouri's AOD, failure by the custodial states does not mandate dismissal, 5085 arises out of the same transaction as 4474, Relator has shown no prejudice on either alleged violation, Respondent has acted within his proper jurisdiction, and the Circuit Court of Clay County, Missouri has proper jurisdiction and authority,

the Honorable Michael J. Maloney requests denial of Relator's Petition for Writ of Prohibition.

Respectfully submitted,

_____
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CERTIFICATE UNDER SPECIAL RULE NO.1, RULE 84.06

Undersigned Attorney for Relator hereby certifies, as required by Special Rule No. 1, Rule 84.06 the foregoing Brief and Argument, submitted by Respondent:

1. Includes the information required by Rule 55.03

2. Complies with the limitations contained in Special Rule No. 1 (b)

3. Contains 5,047 words, in total

Further, Undersigned Attorney for Respondent hereby certifies, as required by Special Rule No. 1 (f), that the floppy disk filed herewith, containing the Relator's Brief and Argument in full, is fully compliant with the requirements of said Rule. Specifically, that the disk is IBM-PC-compatible 1.44 MB, 3 ½-inch size and that it is, to the Undersigned's best knowledge and belief, virus-free.

_____
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